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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,021	04/25/2001	Necdet Uzun	12801-005001	7231
33031	7590	07/05/2005	EXAMINER	
CAMPBELL STEPHENSON ASCOLESE, LLP 4807 SPICEWOOD SPRINGS RD. BLDG. 4, SUITE 201 AUSTIN, TX 78759			VINCENT, DAVID ROBERT	
		ART UNIT	PAPER NUMBER	
			3628	

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/843,021	UZUN, NECDET	
	<b>Examiner</b>	<b>Art Unit</b>	
	David R. Vincent	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 March 2005.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

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***Response to Arguments***

1. Applicant's arguments filed 3/14/05 have been fully considered but they are not persuasive. Applicant argues that that the applied art which discloses a plurality of working and protection paths fails to wrap data back the node it came from.

In response, one of ordinary skill would understand that the whole idea of using protection paths is for that very reason. Data travel in one direction on the working path(s) and in the opposite direction on the protection path(s). When a fault occurs, and the data cannot go forward, it gets sent backward on the protection path(s). Thus detecting a fault wherein the data can longer go forward, causes the data to get wrapped or sent in reverse on the protection path(s).

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Shiragaki (US 6,657,952), as set forth in the previous office action of 12/6/04.

***Response to Arguments***

In re pg. 7, the applicant argues Shiraki fails to disclose the limitations of claim one.

In response, the applicant merely specifies phrases such as "adapted to" and "operable to" in claims 1, and 12. It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only *requires the ability to so perform*. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138.

In response, Shiraki clearly discloses the ability to perform the claimed limitations and in fact actually does disclose using a plurality of paths wherein if a fault occurs

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the network tries to send the data forward on another path or else wraps the data back to the node it came from on a different path (Figs. 12, 7 or 10).

In re pg. 8, the applicant argues Shiraki fails to disclose wrapping data back on paths 101 or 104.

In response, the examiner maintains Shiraki meets these limitations because Shiraki discloses dealing with many different types of failures and in the worst case seniors, data cannot be sent forward on any path (see Fig. 11B where a plurality of failures are detected; or col. 11, lines 20-45 where it is disclosed that data is wrapped by sending it counterclockwise; or see Fig. 12 and col. 12, especially lines 35-40 where it is disclosed how the protection switches are connected to all the multiplexers or demultiplexers). Although Shiraki discloses a plurality of wavelengths/paths inside a ring/transmission line, Shiraki also discloses wrapping ("looping-back") and dealing with "cable cuts" (col. 7, lines 43-65) and transmitting signals in the opposite direction (col. 1, lines 12-40; col. 4, lines 57-60; col. 6, lines 34-41; col. 7, lines 43-65). Clearly one of ordinary skill in the art would realize that Shiraki discloses *the ability to perform the claimed limitations.*

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In re. pg. 8, the applicant argues it is clear that Fig. 12 disclose switching 101 to 103.

In response, the examiner disagrees. One of ordinary skill would see how Figure 12 disclose many paths connected to each other and that the network in Figure 12 can clearly switch between many different paths. Although Shiraki discloses a plurality of wavelengths/paths inside a ring/transmission line, Shiraki also discloses "looping-back" and dealing with "cable cuts" (col. 7, lines 43-65) and transmitting signals in the opposite direction (col. 1, lines 12-40; col. 4, lines 57-60; col. 6, lines 34-41; col. 7, lines 43-65). If Figure 12 merely disclose only switching between paths 101 and 103 then why are there so many possible connections disclosed? Why does col. 12, lines 35-40 disclose that the protection switches (1231 or 1232) are connected to all the multiplexers and/or demultiplexers? Is it possible that the circuit in Figure 12 is an over-design and includes many components that are never actually used? The examiner maintains that Shiraki discloses dealing with many different types of failures and in the worst case seniors, data cannot be sent forward on any path (see Figs. 11B, 7 or 10 where a plurality of failures are detected; or col. 11, lines 20-45 where it is disclosed that data is wrapped by sending it counterclockwise; or see Fig. 12 and col. 12, especially lines

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35-40 where it is disclosed how the protection switches are connected to all the multiplexers or demultiplexers).

In re pg. 8, the applicant argues the examiner failed to respond to an argument in the office action of 12/8/04.

In response, the argument was moot due to the new grounds of rejection. Furthermore, the new grounds of rejection did respond to the argument, as applicant noted in pg. 8 of the remarks.

In re. pg. 8, the applicant argues Shiraki fails to meet the limitations of wrapping data.

In response, the examiner maintains Shiraki meets these limitations because Shiraki discloses dealing with many different types of failures and in the worst case seniors, data cannot be sent forward on any path (see Figs. 11B, 7 or 10 where a plurality of failures are detected; or col. 11, lines 20-45 where it is disclosed that data is wrapped by sending it counterclockwise; or see Fig. 12 and col. 12, especially lines 35-40 where it is disclosed how the protection switches are connected to all the multiplexers or demultiplexers). Furthermore, note the bidirectional arrows in the Figures of Shiraki.

#### ***Conclusion***

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3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R. Vincent whose telephone number is 571 272 3080. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Sough can be reached on 571 272 6799. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*David R Vincent 6/25/05*  
David R Vincent  
Primary Examiner  
Art Unit 3628

June 25, 2005